IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3460 OF 2006

Vishnulal B. Kori,
Markandeshwar Nagar, Chawl
No.3, Room No.37, Dr.A.B.Road,
Worli, Mumbai. Petitioner

versus

M/s.Lufthansa German Airlines,
Express Tower, Nariman Point,
Mumbai. Respondent

Mr.A.S.Peerzada for petitioner.

Mr.Ashok Wanwani i/by M/s.Monika Parikh & Co. for respondent.

CORAM : R.M.S.KHANDEPARKAR, J.

DATE : 08th November 2006

PC :

1. Heard. The petitioner challenges an order passed in Reference No.9 of 2000 passed on 18th May 2004 by the Central Government Industrial Tribunal, Bombay whereby the reference has been answered against the claim of the petitioner as employee of the respondent company.

2. The impugned order is sought to be challenged on the ground that the Industrial Tribunal failed

to appreciate the evidence on record in proper perspective and failed to take note of the fact that the service agreement dated 1st November 1997 was to be effective from 1st November 1997, whereas, the petitioner has claimed to be in the employment of respondent from the year 1994 and in that respect the respondent has failed to lead any evidence but denied claim of the petitioner for the said period.

3. At the outset it is to be noted that the petitioner claims to be the employee of respondent company and it is primarily for him to establish his claim by leading appropriate evidence. In the case in hand the detailed analysis of the materials on record by the Tribunal disclose failure on the part of petitioner to establish his claim prima facie. Admittedly, the petitioner was not required to even sign any muster roll maintained by the company. It was sought to be argued that no such muster roll might have been maintained by the company or that name of the petitioner was not recorded in the muster roll. I am not concerned with "ifs and buts" situation. The materials on record no where disclose any such contention having been raised by the petitioner before the

Tribunal inspite of the fact that there was clear evidence to the effect that the petitioner was not required to sign the muster roll. The muster roll is most important document in such case as the same is required for various purpose including to check number of employees employed by the employer.

4. The impugned order also discloses that the petitioner has clearly admitted execution of an agreement Exhibit M-1 i.e. service contract with the officer of respondent company and the said contract apparently discloses that petitioner was the employee of the said employee and not of the company. The impugned order also disclose admission on the part of the petitioner that there was no written contract with the company disclosing any relationship with the company including relationship in the nature of employee-employer.

5. As regards evidence which has been laid on behalf of respondent company and which has been analysed by the Tribunal and the analysis as reflected from the impugned order, disclose that the petitioner was initially employed by Mr.G.Pfisterer who was Air Port Station Manager

in the year 1994 and thereafter was employed by Mr.D.Grosse who was subsequent Station Manager since November 1997. Merely because the petitioner was employed by the officers of the company in their individual capacity, that cannot ipso facto mean to establish relationship of employee-employer between the petitioner and respondent.

6. Since the petitioner has failed to lead any cogent evidence in respect of his claim of employment with the respondent company, no fault can be found with the impugned order and there is no case made out for interference in the impugned order.

7. The impugned order does not disclose any jurisdictional error on the part of Tribunal for deciding the reference and on that count also there is no case made out for interference. For the reasons stated above, writ petition is rejected.

(R.M.S.KHANDEPARKAR, J.)